

Update: Contempt of Court Benchbook (Revised Edition)

CHAPTER 5

Common Forms of Contempt of Court

5.17 Criticisms of the Court

C. Test to Determine Whether Criticism Is Contumacious

Add the following case summary at the bottom of p 70:

In *In re Contempt of Dudzinski*, ___ Mich App ___ (2003), the alleged contemnor, Dudzinski, was a spectator in the courtroom during a motion hearing in a civil lawsuit brought by the personal representative of a person fatally shot by a police officer. Dudzinski wore a shirt containing the phrase “Kourts Kops Krooks.” The trial court found that the shirt affected the fair administration of justice and ordered Dudzinski to remove it or leave the courtroom. Dudzinski refused and invoked his First Amendment right to freedom of expression. The trial court found Dudzinski in criminal contempt of court and sentenced him to 29 days in jail. Dudzinski served the full term. *Id.* at ___.

The Court of Appeals concluded that the trial court violated Dudzinski’s First Amendment right to freedom of expression by ordering him to remove the shirt or leave the courtroom because the “speech” at issue did not constitute an imminent threat to the administration of justice. *Id.* at ___, relying on *Norris v Risley*, 918 F2d 828, 832 (CA 9, 1990). The Court of Appeals distinguished the facts in this case from those in *In re Contempt of Warriner*, 113 Mich App 549 (1983), where a spectator at a bail hearing raised his fist and shouted. *Dudzinski, supra* at ___. The Court in *Dudzinski* also distinguished *Norris, supra*, where the United States Court of Appeals held that the appearance of 15 spectators wearing “Women Against Rape” buttons at the defendant’s jury trial posed an unacceptably high risk of depriving the defendant of a fair trial. *Dudzinski, supra* at ___. In *Dudzinski*, the Court of Appeals emphasized that the allegedly contumacious behavior occurred at a pretrial hearing rather than a jury trial and noted that Dudzinski was only one of three persons wearing the shirts. *Id.* at ___.

Although the Court of Appeals concluded that the trial court violated Dudzinski's constitutional rights by ordering him to remove the shirt or leave the courtroom, the Court held that the trial court did not abuse its discretion by holding Dudzinski in contempt for failing to obey its order. The Court of Appeals stated that even though "the statement on [Dudzinski's] shirt did not constitute an imminent threat to the administration of justice and was constitutionally protected speech, [Dudzinski's] willful violation of the trial court's order, regardless of its legal correctness, warranted the trial court's finding of criminal contempt." *Dudzinski, supra* at ___, citing *Kirby v Michigan High School Athletic Ass'n*, 459 Mich 23, 40 (1998), and *State Bar of Michigan v Cramer*, 399 Mich 116, 125 (1976).